

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ROBERT W. JOHNSON,

Plaintiff(s),

V.

NEVADA DIVISION OF WELFARE AND
SUPPORTIVE SERVICES,

Defendant(s).

Case No. 2:24-cv-01578-RFB-NJK

REPORT AND RECOMMENDATION

Plaintiff is proceeding in this action *pro se* and has requested authority pursuant to S.C. § 1915 to proceed *in forma pauperis*. Docket No. 1.

I. *In Forma Pauperis* Application

Plaintiff filed an amended affidavit required by § 1915(a). Docket No. 1. Plaintiff has shown an inability to prepay fees and costs or give security for them. Accordingly, the request to proceed *in forma pauperis* will be granted pursuant to 28 U.S.C. § 1915(a). The Clerk's Office is further **INSTRUCTED** to file the complaint on the docket. The Court will now review Plaintiff's complaint.

II. Screening the Complaint

Federal courts are given the authority to dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). When a court dismisses a complaint under § 1915, the plaintiff should be given leave to amend the complaint with directions as to curing its deficiencies, unless it is clear from the face of the complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint for failure to state a claim upon which relief can be granted. Review under Rule 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 723

1 (9th Cir. 2000). A properly pled complaint must provide a short and plain statement of the claim
 2 showing that the pleader is entitled to relief. Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp. v.*
 3 *Twombly*, 550 U.S. 544, 555 (2007). Although Rule 8 does not require detailed factual allegations,
 4 it demands “more than labels and conclusions” or a “formulaic recitation of the elements of a cause
 5 of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Papasan v. Allain*, 478 U.S. 265,
 6 286 (1986)). The court must accept as true all well-pled factual allegations contained in the
 7 complaint, but the same requirement does not apply to legal conclusions. *Iqbal*, 556 U.S. at 679.
 8 Mere recitals of the elements of a cause of action, supported only by conclusory allegations, do
 9 not suffice. *Id.* at 678. Secondly, where the claims in the complaint have not crossed the line from
 10 conceivable to plausible, the complaint should be dismissed. *Twombly*, 550 U.S. at 570.

11 Plaintiff brings this action seeking millions of dollars in money damages pursuant to 42
 12 U.S.C. § 1983. *See* Docket No. 1-1 at 3, 5. The complaint alleges in conclusory terms that the
 13 Nevada Division of Welfare and Supportive Services discriminated against Plaintiff in myriad
 14 ways. *See id.* at 4. Plaintiff’s complaint fails as a matter of law for at least two reasons.¹ First,
 15 states are not considered “persons” for purposes of claims brought pursuant to 42 U.S.C. § 1983.
 16 *Will v. Mich. Dept. of State Police*, 491 U.S. 58, 71 (1989). Second, states are immune from federal
 17 damages claims pursuant to the Eleventh Amendment of the United States Constitution.
 18 *Franceschi v. Schwartz*, 57 F.3d 828, 831 (9th Cir. 1995). The Division, as a state agency, is not
 19 amenable to suit and any effort to amend would be futile. *See Rowell v. Sisolak*, 2020 WL
 20 2744080, at *2 (D. Nev. May 5, 2020) (in screening § 1983 claim involving Nevada’s Department
 21 of Health and Human Services, Division of Welfare and Supportive Services, explaining that it is
 22 a state agency protected by Eleventh Amendment immunity and that the claim was subject to
 23 dismissal without leave to amend), *adopted*, 2020 WL 2735381 (D. Nev. May 26, 2020); *see also*
 24 N.R.S. 41.031(3) (“The State of Nevada does not waive its immunity from suit conferred by
 25 Amendment XI of the Constitution of the United States”).

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¹ In light of the findings herein, the Court need not opine on other deficiencies in the
 28 complaint.

1 Accordingly, the undersigned **RECOMMENDS** that Plaintiff's complaint be
2 **DISMISSED** without leave to amend.

3 Dated: September 5, 2024

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5 Nancy J. Koppe
United States Magistrate Judge

6 **NOTICE**

7 This report and recommendation is submitted to the United States District Judge assigned
8 to this case pursuant to 28 U.S.C. § 636(b)(1). A party who objects to this report and
9 recommendation must file a written objection supported by points and authorities within fourteen
10 days of being served with this report and recommendation. Local Rule IB 3-2(a). Failure to file
11 a timely objection may waive the right to appeal the district court's order. *Martinez v. Ylst*, 951
12 F.2d 1153, 1157 (9th Cir. 1991).

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